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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/802,314	03/17/2004	Van Le Huynh	ECV-5539CON	3894

7590 11/23/2009
EDWARDS LIFESCIENCES LLC
One Edwards Way
Irvine, CA 92614

EXAMINER

ART UNIT PAPER NUMBER

DATE MAILED: 11/23/2009

Please find below and/or attached an Office communication concerning this application or proceeding.

Communication Re: Appeal

Application No.

10/802,314

Examiner

Brian E. Pellegrino

Applicant(s)

HUYNH ET AL.

Art Unit

3738

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

1. ☐ The Notice of Appeal filed on _____ is not acceptable because:
- (a) ☐ it was not timely filed.
 - (b) ☐ the statutory fee for filing the appeal was not submitted. See 37 CFR 41.20(b)(1).
 - (c) ☐ the appeal fee received on _____ was not timely filed.
 - (d) ☐ the submitted fee of \$_____ is insufficient. The appeal fee required by 37 CFR 41.20(b)(1) is \$_____.
 - (e) ☐ the appeal is not in compliance with 37 CFR 41.31(a)(1) in that no claim has been twice rejected.
 - (f) ☐ a Notice of Allowability, PTO-37, was mailed by the Office on _____.
2. ☐ The appeal brief filed on _____ is NOT acceptable for the reason(s) indicated below:
- (a) ☐ the brief and/or brief fee is untimely. See 37 CFR 41.37(a).
 - (b) ☐ the statutory fee for filing the brief has not been submitted. See 37 CFR 41.20(b)(2).
 - (c) ☐ the submitted brief fee of \$_____ is insufficient. The brief fee required by 37 CFR 41.20(b)(2) is \$_____.

The appeal in this application will be dismissed unless corrective action is taken to timely submit the brief and requisite fee. See 37 CFR 41.37(a)(1). Extensions of time may be obtained under 37 CFR 1.136(a). See 37 CFR 41.37(e).

3. ☒ The appeal in this application is DISMISSED because:
- (a) ☐ the statutory fee for filing the brief as required under 37 CFR 41.20(b)(2) was not timely submitted and the period for obtaining an extension of time to file the brief under 37 CFR 1.136(a) has expired.
 - (b) ☐ the brief was not timely filed and the period for obtaining an extension of time to file the brief under 37 CFR 1.136(a) has expired.
 - (c) ☐ a Request for Continued Examination (RCE) under 37 CFR 1.114 was filed on _____.
 - (d) ☒ other: See Continuation Sheet.
4. ☒ Because of the dismissal of the appeal, this application:
- (a) ☒ is abandoned because there are no allowed claims.
 - (b) ☐ is before the examiner for final disposition because it contains allowed claims. Prosecution on the merits remains CLOSED.
 - (c) ☐ is before the examiner for consideration.

/Brian E Pellegrino/
Primary Examiner, Art Unit 3738

Continuation of 3. (d) Other: A Non-compliant brief notice was sent out on 7/20/09 requiring Applicant to refer to claim limitations as explained in 37 CFR 41.37(c)(1)(v). The summary of claimed subject matter is to include a clear explanation of where claimed features and functions are set forth in the disclosure with reference to the specification by page and line number, and to the drawings by "reference characters" as the application has drawings showing features that are claimed and where they are referenced. Applicant submits a response reciting the claim limitations and in a separate paragraph lists a few figures and pages with lines of the specification "separately" from the claim limitations leaving it vague and unclear as to exactly what defines the specific limitations of the claims. Again, as the MPEP states for this section of the brief, the Applicant must provide "A concise explanation of the subject matter defined in each of the independent claims involved in the appeal, which shall refer to the specification by page and line number, and to the drawing, if any, by reference characters. For each independent claim involved in the appeal and for each dependent claim argued separately under the provisions of paragraph (c)(1)(vii) of this section, every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters.